



C.M.A. No.140 of 2022 and CROS. OBJ. No.30 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2024

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No.140 of 2022

CROS. OBJ. No.30 of 2024

and C.M.P. No. 9752 of 2024

1. Rajendran
2. R. Amutha
3. A.R. Kaviya
4. A.R. Udhaya

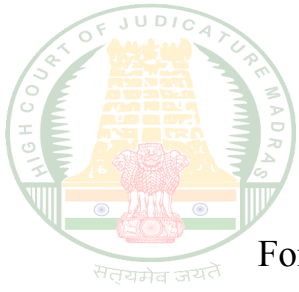
... Appellants / Petitioners

Vs.

1. Prabhakaran
2. M/s. United India Insurance Co. Ltd.,
Branch Office,
rep. by its Manager,
No.50A, Pallivasal Street,
Perambalur - 621 212.

... Respondents / Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Order and Decretal order in M.C.O.P. No.826 of 2018 dated 21.09.2021, on the file of the Motor Accident Claims Tribunal/ Principal District Judge, Perambalur.



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For Appellants : Mr. S. Kamadevan
For R1 : Notice Dispensed With
For R2 : Mrs. I. Malar

CROS. OBJ. NO.30 of 2024

The Manager,
United India Insurance Co. Ltd.,
No.50A, Pallivasal Street,
Perambalur - 621 212.

vs.

1. Rajendran
2. R. Amutha
3. A.R. Kaviya
4. A.R. Udhaya
5. Prabhakaran

The Cross objection filed this Memorandum of Cross objections under Order 41 Rule 22 of the Civil Procedure Code, 1908 to reduce the compensation amount awarded in the Judgment and Decree in M.C.O.P. No.826 of 2018 dated 21.09.2021, on the file of the Motor Accident Claims Tribunal/ Principal District Judge, Perambalur.

For Cross objectors : Mrs. I. Malar
For R1 to R4 : Mr. S. Kamadevan
For R5 : No Appearance



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JUDGMENT

This Civil Miscellaneous appeal has been filed by the claimants seeking enhancement of compensation awarded in M.C.O.P. No.826 of 2018 dated 21.09.2021, on the file of the Motor Accident Claims Tribunal/ Principal District Judge, Perambalur. The second respondent - insurance company has filed cross objection challenging the quantum of compensation and also alleging contributory negligence on the part of the deceased, in this case.

2. For the sake of convenience, the parties are referred herein according to their litigative status and rank before the Tribunal. The brief facts leading to filing of this appeal is as follows:

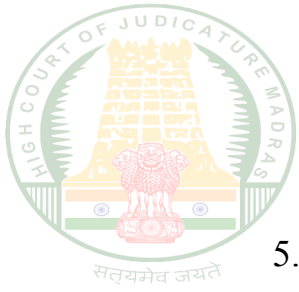
3. The case of the claimant is that, on 07.06.2018, at about 11:00PM, the deceased Suriya, who was a second year M.B.B.S student, was travelling as a pillion rider along with two other persons in a two wheeler bearing Registration No.TN-46-V-2727, which was driven by his friend Harivarman from Villupuram to Mundiyaambakkam on Chenji Bypass Road. The said Harivarman rode the two wheeler in a rash and negligent manner and



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dashed against the person, who was standing by the side of the said road, which resulted in causing serious injuries to the deceased Suriya as well as the bystander. Immediately, they were admitted in the hospital and during the course of treatment, the said Suriya succumbed to fatal injuries. A case was also registered in Crime No.547 of 2018 under Sections 279, 337 @ 304(A) of IPC on the file of the Villupuram Taluk Police Station. For the death of the deceased Suriya, who is aged about 19 years at the time of accident, his parents, brother and sister have come forward with the claim petition, seeking compensation for a sum of Rs.1,00,00,000/- by invoking Section 166 of the Motor Vehicles Act, 1988.

4. Before the Tribunal, the respondents, who are the owner and the insurer of the two wheeler bearing Registration No.TN-46-V-2727, in which the deceased Suriya traveled as a pillion rider at the time of accident, remained ex-parte. Therefore, based on the pleadings and evidence placed on record, the Tribunal has awarded compensation for a sum of Rs.35,80,000/- along with the interest @ 7.5% per annum from the date of filing of claim petition till the date of realization.



5. Aggrieved over the quantum of compensation awarded, the claimants have come forward with this appeal and after receipt of notice, the insurance company has also filed a cross objections challenging the quantum of compensation and also alleging contributory negligence on the part of the deceased Suriya.

6. The learned counsel appearing for the appellants/ claimants submits that the Tribunal has only fixed Rs.30,000/- as monthly notional income of the deceased, who is a second year M.B.B.S student at the time of accident and further adopted the multiplier based on the age of the parents of the deceased, which requires interference of this Court and prays to modify the notional income and multiplier, consequently enhance the compensation awarded by the Tribunal.

7. Per contra, the learned counsel appearing for the second respondent - insurance company submits that there is ample evidence placed on record to show that, three persons have travelled in the two wheeler and due to rash and negligent of the rider of the two wheeler, a bystander was hit. She further submits that the deceased had sustained head injury, due to non wearing

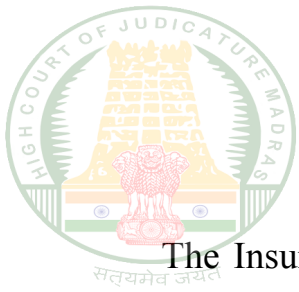


of helmet at the time of accident, which leads to his death. Therefore, she prays to fix contributory negligence on the part of the deceased and also contended that the notional income fixed by the Tribunal on the deceased is on the higher side, hence prays to reduce the compensation.

8. I have considered the submissions made on both sides and perused the entire evidence placed on record.

9. Admittedly, in this case, the evidence adduced on the side of the claimants were not been challenged, since the second respondent insurance company had remained ex-parte before the Tribunal. However, on perusal of the Ex.P.7 - Final Report filed in this case, shows that three persons have travelled in the said two wheeler, which was driven by one Harivarman in a rash and negligent manner along with the deceased Suriya and other person and hit on the bystander, which resulted in causing the death of the bystander and the deceased Suriya, pillion rider.

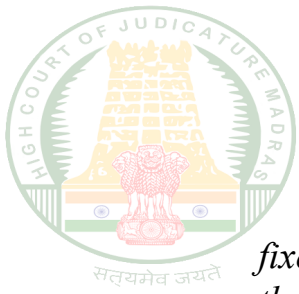
10. There is also recording that the deceased Suriya had sustained grievous head injury and he was not wearing helmet at the time of accident.



The Insurance company claims that, since the deceased had travelled without helmet, he has sustained head injury and succumbed to death, therefore, the deceased has also contributed to the negligence. The learned counsel appearing for the insurance company has also relied on the Accident Register, Motor Vehicle Inspection Report and Final Report and contended that the contributory negligence to be fixed on the part of the claimant for not wearing of helmet and travelling of three persons in the two wheeler.

11. In ***Mohammed Siddique and another vs. National Insurance Company Limited and others [2020ACJ751]*** has held that the act of riding of three persons in a two-wheeler is amount to negligent or not, to be decided on the facts and circumstances of each cases. The Division Bench of this Court in ***Kalaiselvan vs Y. Josaph Paladurai and others in C.M.A. No.2893 of 2021 [MANU/ TN/ 5507/ 2022]***, has considered the same point and has held in paragraph Nos.13 and 13(i) as follows:

"13. From the materials on record, it is seen that based on the evidence of appellant as P.W.1 and Ex.P1 / F.I.R., which was registered against the driver of the Omni car and in the absence of any contra evidence let in by the 2nd respondent-Insurance Company to the evidence of P.W.1, the Tribunal has fixed negligence on the part of the driver of the Omni car by giving valid reasons. But, the Tribunal after holding that the accident occurred due to rash and negligent driving by the driver of the Omni car,



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*fixed 20% contributory negligence on the part of the appellant on the ground that three persons traveled in the two wheeler by relying on the judgment of this Court reported in **2010 ACJ 1316, [National Insurance Company Limited and others Vs. S.Chitra and others]**. In the judgment of the Hon'ble Apex Court reported in (2020) 3 SCC 57, [Mohammed Siddique and another Vs. National Insurance Company Limited and others], relied on by the learned counsel appearing for the appellant, the Hon'ble Apex Court has held that it has to be proved that rider of the two wheeler contributed to the accident inspite of three persons travelling in the two wheeler. The relevant portion of the said judgment is extracted hereunder:*

“12. But the above reason, in our view, is flawed. The fact that the deceased was riding on a motor cycle along with the driver and another, may not, by itself, without anything more, make him guilty of contributory negligence. At the most it would make him guilty of being a party to the violation of the law. [Section 128](#) of the Motor Vehicles Act, 1988, imposes a restriction on the driver of a two-wheeled motor cycle, not to carry more than one person on the motor cycle. [Section 194C](#) inserted by the [Amendment Act 32](#) of 2019, prescribes a penalty for violation of safety measures for motor cycle drivers and pillion riders. Therefore, the fact that a person was a pillion rider on a motor cycle along with the driver and one more person on the pillion, may be a violation of the law. But such violation by itself, without anything more, cannot lead to a finding of contributory negligence, unless it is established that his very act of riding along with two others, contributed either to the accident or to the impact of the accident upon the victim. There must either be a causal connection between the violation and the accident or a causal connection between the violation and the impact of the accident upon the victim. It may so happen at times, that the accident could have been averted or the injuries sustained could have been of a lesser degree, if there had been no violation of the law by the victim. What could otherwise have resulted in a simple injury, might have



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resulted in a grievous injury or even death due to the violation of the law by the victim. It is in such cases, where, but for the violation of the law, either the accident could have been averted or the impact could have been minimized, that the principle of contributory negligence could be invoked. It is not the case of the insurer that the accident itself occurred as a result of three persons riding on a motor cycle. It is not even the case of the insurer that the accident would have been averted, if three persons were not riding on the motor cycle. The fact that the motor cycle was hit by the car from behind, is admitted. Interestingly, the finding recorded by the Tribunal that the deceased was wearing a helmet and that the deceased was knocked down after the car hit the motor cycle from behind, are all not assailed. Therefore, the finding of the High Court that 2 persons on the pillion of the motor cycle, could have added to the imbalance, is nothing but presumptuous and is not based either upon pleading or upon the evidence on record. Nothing was extracted from PW-3 to the effect that 2 persons on the pillion added to the imbalance.

13. Therefore, in the absence of any evidence to show that the wrongful act on the part of the deceased victim contributed either to the accident or to the nature of the injuries sustained, the victim could not have been held guilty of contributory negligence. Hence the reduction of 10% towards contributory negligence, is clearly unjustified and the same has to be set aside."

13(i). In the present case, the 2nd respondent-Insurance Company did not examine the driver of the Omni car or any independent eyewitness to prove that the accident has occurred due to travelling of three persons in the motorcycle at the time of accident. The 2nd respondent-Insurance Company examined only their official as R.W.1 and not disproved the evidence of P.W.1 and contents of F.I.R. The Tribunal considering the evidence of P.W.1 and F.I.R., held that the accident has occurred only due to rash and negligent driving by the driver of the Omni car."



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12. Admittedly, in this case, no evidence were placed on record to show that the accident has taken place, due to loss of control and balance by the rider on account of three persons travelling in the two wheeler. Therefore, unless there is an evidence, three persons travelling in a two wheeler is not a ground to fix contributory negligence.

13. In this case, there is ample evidence to show that the deceased and other persons have travelled in the two wheeler, without wearing helmet and the deceased has sustained head injuries and succumbed to death. This Court in ***C.M.A.(MD). No. 987 and 988 of 2014 dated 13.02.2017, The Branch Manager (Oriental Insurance Company Limited) vs. Indirani and others*** has held as follows:

“11. Without wearing a helmet, no rider can drive the two wheeler and as per Section 129 of the Motor Vehicles Act, 1988, it is mandatory. Section 129 of the Motor Vehicles Act, 1988, is usefully extracted hereunder:

"129. Wearing of protective headgear.- Every person driving or riding (otherwise than in a side car, on a motor cycle of any class or description) shall, while in a public place, wear [protective headgear conforming to the standards of Bureau of Indian Standards]:



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Provide that the provisions of this section shall not apply to a person who is a Sikh, if he is, while driving or riding on the motor cycle, in a public place, wearing a turban:

Provided further that the State Government may, by such rules, provide for such exceptions as it may think fit.

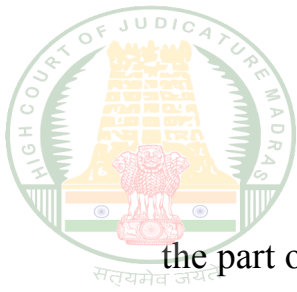
Explantation.- "Protective headgear" means a helmet which,-

(a) by virtue of its shape, material and construction, could reasonably be expected to afford to the person driving or riding on a motor cycle a degree of protection from injury in the even of an accident; and

(b) is securely fastened to the head of the wearer by means of straps or other fastenings provided on the headgear."

12. This Court has elaborately dealt with the instances of wearing of helmet by quoting the details of death cases due to non-wearing of helmet in R. Mallika and others vs. A. Babu and others [C.M.A.No.3235 of 2014, decided on 08.06.2015] and therefore, 15% negligence has to be fixed on the rider of the two wheeler for not wearing the helmet and accordingly, 15% negligence is fixed on the rider of the two wheeler."

14. This Court is consistently following the above principle that, if a person travelled in a two wheeler without wearing helmet and sustained injury, it shall be accepted that he had also negligently contributed to the accident. Therefore, this Court inclined to fix 15% contributory negligence on



the part of the deceased, for not wearing helmet, at the time of accident.

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15. The next contention raised by both sides is with respect to monthly notional income fixed on the deceased, the Tribunal has fixed Rs.30,000/- per month as notional income, considering that the deceased is a second year M.B.B.S student. The Division Bench of this Court in **Jeyakannan and Others vs. Divya Impex and another [2017 ACJ 2861]** had fixed Rs.18,000/- per month as notional income for a second year M.B.B.S student, by following previous judgment of this Court in *Managing Director, Metropolitan Transport Corporation vs. S. Mariam Beevee [2014 ACJ 2693]*, which has approved the fixation of notional income or Rs.30,000/- per month including the future prospectus. A Division Bench of this Court in *The Branch Manager, National Insurance Co. Ltd. Vs. Pradeep Raja and Ors. [MANU/TN/5959/2021]* has fixed Rs.60,000/- as monthly notional income for a fourth year medical student including future prospects.

16. In this case, the accident is of the year 2018, the Tribunal has fixed Rs.30,000/- as monthly notional income. However, as held by the *The Branch Manager, National Insurance Co. Ltd. Vs. Pradeep Raja and Ors.*



case cited supra, the notional income is fixed as Rs.60,000/- for a fourth year medical student, including future prospectus. Therefore, I am of the view that fixing the notional income for the student, who is studying second year M.B.B.S course of Rs.30,000/- per month is reasonable and the same is hereby confirmed. The Tribunal by following the dictum laid down by the Apex Court in ***National Insurance Co. Ltd., vs. Pranay Sethi and other [2017 (16) SCC 680]*** had fixed 50% as future prospects, however, the deceased does not fall under the category of permanent job, therefore, the future prospects fixed by the Tribunal is modified to 40%.

17. The Tribunal has fixed the multiplier, based on the age of the parents, but it is well settled principle that the age of the deceased is alone to be taken into account for adopting multiplier. Therefore, considering the age of the deceased, who is 19 years at the time of accident, by following the dictum laid down by the Hon'ble Apex Court in ***Sarla Verma and others Vs. Delhi Transport Corporation and others [2009 (6) SCC 121]***, the multiplier is fixed as "18". Since, the deceased herein is a bachelor, 50% of his income is deducted towards his personal and living expenses, accordingly, the loss of income is assessed as Rs.45,36,000/-.

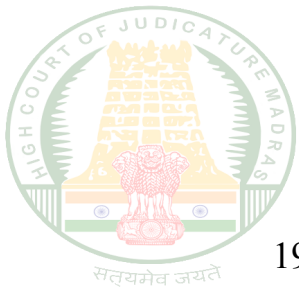


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Annual income (Rs.30,000/- x 12)	= Rs.3,60,000/-
Future prospects @ 40%	= Rs.1,44,000/-
Yearly income of the deceased	= Rs.5,04,000/-
Yearly contribution to his family (deduction of 1/2)	= Rs.2,52,000/-
Applicable Multiplier	= 18
Total compensation (Rs.2,52,000/- x 18)	= Rs.45,36,000/-

18. The Tribunal has awarded Rs.40,000/- under the head loss of love and affection, but as per the Hon'ble Apex Court in ***Magma General Insurance Co. Ltd., vs Nanu Ram [2018 ACJ 2018]***, held that all the claimants are entitled for consortium. Hence, this Court is inclined to grant Rs.40,000/- each to the parents of the deceased Suriya. The Tribunal has awarded Rs.50,000/- each to the brother and sister of the deceased, however, the brother and sister are not the legal heirs or the dependants of the deceased, therefore, I am of the view that the compensation awarded to the elder brother and sister of the deceased is not proper and the same is hereby rejected and further, they are not entitled for any compensation, in their favour. The Tribunal has awarded Rs.15,000/- each under the head Loss of estate and Funeral expenses, this Court finds the same is proper.

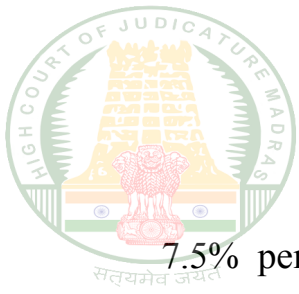


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19. Accordingly, the award passed by the Tribunal under various heads are hereby modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced
1.	Loss of dependency	35,10,000/-	45,36,000/-	Enhanced
2.	Loss of love and affection modified to loss of consortium	40,000/-	80,000/-	Enhanced
3.	Loss of estate	15,000/-	15,000/-	Confirmed
4.	Funeral expenses	15,000/-	15,000/-	Confirmed
	Total	35,80,000/-	46,46,000/-	Enhanced
	Deduction of 15% contributory negligence	---	6,96,900/-	---
	Total Compensation	35,80,000/-	39,49,100/-	Enhanced

20. In the result, the Civil Miscellaneous Appeal filed by the claimant and the Cross objection filed by the second respondent - insurance company are partly allowed. The compensation awarded by the Tribunal at Rs.35,80,000/- is hereby enhanced to Rs.46,46,000/- and after deducting 15% contributory negligence on the part of the deceased, the total compensation payable to the claimants is **Rs.39,49,100/- [Rupees Thirty Nine Lakh Forty Nine Thousand and One Hundred only]** along with interest at the rate of



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7.5% per annum from the date of filing of Claim Petition till the date of

deposit, excluding the default period, if any. The second respondent - Insurance Company is directed to deposit the amount awarded by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P. No.826 of 2018 dated 21.09.2021, on the file of the Principal District Judge, Motor Accident Claims Tribunal, Perambalur. **On such deposit, the first appellant, who is the father of the deceased is entitled to Rs.5,00,000/- and the second appellant, who is the mother of the deceased is entitled to Rs.34,49,100/- and they are permitted to withdraw the award amount now determined by this Court along with interest and costs, less the amount if any, already withdrawn, by making proper application before the Tribunal. The compensation of Rs.50,000/- granted by the Tribunal towards the third and fourth appellants are hereby rejected and they are not entitled to any compensation.** The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Accounts of the first and the second appellants. Since this Court has enhanced the compensation, the appellants/claimants are directed to pay the necessary Court fee, if any, on the enhanced compensation. Consequently, connected



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civil miscellaneous petition stands closed. There shall be no order as to costs
in the present appeal.

22.11.2024

stn

Index: Yes/No

Speaking Order: Yes/No

Neutral Citation Case: Yes/No

To:

1. The Principal District Judge,
Motor Accident Claims Tribunal,
Perambalur.
2. The Section Officer,
V.R.Section,
High Court, Chennai.



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K. RAJASEKAR, J.

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